

NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz. R. Supreme Court 111(c); ARCAP 28(c); Ariz. R. Crim. P. 31.24

FILED BY CLERK

AUG 14 2012

COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

ANDREW SKY, aka ANDREW)	2 CA-CV 2011-0180
SHLENSKY, a single person,)	DEPARTMENT A
)	
Plaintiff/Appellee,)	<u>MEMORANDUM DECISION</u>
)	Not for Publication
v.)	Rule 28, Rules of Civil
)	Appellate Procedure
JOHN G. BRAVO and THERESE)	
CLEARY, husband and wife,)	
)	
Defendants/Appellants.)	
_____)	

APPEAL FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. C20076028

Honorable Ted B. Borek, Judge

AFFIRMED

Law Office of Ethan Steele, PC
By Ethan Steele

Tucson
Attorney for Plaintiff/Appellee

John G. Bravo

Tucson
In Propria Persona

HOWARD, Chief Judge.

¶1 Appellant John Bravo¹ appeals from the portion of the trial court’s ruling against him and in favor of plaintiff/appellee Andrew Sky on Sky’s quiet title claim. Bravo argues the court erred in various ways, including by failing to grant him sufficient attorney fees. Because the court did not err, we affirm.

Factual and Procedural Background

¶2 “We view the facts in the light most favorable to sustaining the trial court’s judgment.”² *Harris v. City of Bisbee*, 219 Ariz. 36, ¶ 3, 192 P.3d 162, 163 (App. 2008), quoting *Cimarron Foothills Cmty. Ass’n v. Kippen*, 206 Ariz. 455, ¶ 2, 79 P.3d 1214, 1216 (App. 2003). The owners of real property had wanted to sell a portion of the property, including the house to one party and the remaining portion to another buyer. Sky intended to purchase the entire “13 plus acres[,] . . . quit claim nine plus acres to” the seller, and permit the seller to sell the “nine plus acres” to Bravo which, Sky expected, would leave him with “the house on the 3.3 plus acres.” Bravo instructed a company to create descriptions for four parcels out of the land, which caused the parcel with the house, purchased by Sky, to be of an “insufficient size for zoning.” Sky sued Bravo and various other defendants for claims arising out of the transaction. Bravo filed counterclaims for breach of contract and quiet title. The jury found in favor of the

¹An attorney filed the notice of appeal on behalf of both Bravo and Therese Cleary, however Bravo wrote the opening brief himself. Because Bravo is not an attorney, he may not represent Cleary on appeal, *State v. 1810 E. Second Ave.*, 193 Ariz. 1, 2 n.1, 969 P.2d 166, 167 n.1 (App. 1997), and we address the appeal as it relates to Bravo only. The judgment against Cleary is affirmed.

²Although most claims were tried to a jury, the quiet title claim was tried to the trial court. Because Bravo raises issues relevant only to the bench trial and to attorney fees on appeal, we review only those facts relevant to the bench trial.

defendants on all counts included in the jury trial; however the trial court found in favor of Sky on the quiet title claim. The court issued a final judgment and this appeal followed.

Discussion

¶3 Bravo first argues the trial court’s May 2011 ruling granting Sky quiet title and its corrective July 2011 ruling contain factual and clerical errors. However, he does not explain how any of these errors prejudiced him or affected the outcome of the case, nor does he cite to any authority relevant to alleged factual errors. He therefore has waived any argument concerning these errors on appeal. *See* Ariz. R. Civ. App. P. 13(a)(6) (“An argument . . . shall contain the contentions of the appellant with respect to the issues presented, and the reasons therefor, with citations to the authorities, statutes and parts of the record relied on.”); *Polanco v. Indus. Comm’n*, 214 Ariz. 489, n.2, 154 P.3d 391, 393-94 n.2 (App. 2007) (appellant’s failure to develop and support argument waives issue on appeal). In any case, we would not reverse for harmless error, that is, any error “which does not affect the substantial rights of the parties,” Ariz. R. Civ. P. 61, and Bravo has not established any harm.

¶4 Bravo also contends the trial court was biased and unfair towards him, claiming the court treated him in a discriminatory manner. Bias is defined as “a hostile feeling or spirit of ill-will . . . towards one of the litigants.” *Simon v. Maricopa Med. Ctr.*, 225 Ariz. 55, ¶ 29, 234 P.3d 623, 631 (App. 2010), *quoting* *State v. Perkins*, 141 Ariz. 278, 286, 686 P.2d 1248, 1256 (1984) (alteration in *Perkins*). Bravo bears the burden of showing by a preponderance of the evidence that a specific cause of bias or

prejudice exists outside of the judge's actions in the current case. *See id.* ¶¶ 29-30. He does not provide any evidence to support his claim and relies only on bald assertions. We will not search the record to make Bravo's argument for him. *See Ramirez v. Health Partners of S. Ariz.*, 193 Ariz. 325, n.2, 972 P.2d 658, 660 n.2 (App. 1998) (“Judges are not like pigs, hunting for truffles buried in [the record].”), quoting *United States v. Dunkel*, 927 F.2d 955, 956 (7th Cir. 1991) (alteration in *Ramirez*). Accordingly, Bravo has failed to establish that the court was biased against him.

¶5 Bravo further asserts the trial court's ruling on the quiet title claim violated the Double Jeopardy Clause because the jury had found in his favor on the fraud and negligent misrepresentation claims. However, the Double Jeopardy Clause does not apply in this civil context. *Martin v. Reinstein*, 195 Ariz. 293, ¶ 19, 987 P.2d 779, 788 (App. 1999). Thus, Bravo's constitutional rights were not violated.

¶6 He also argues the court failed to rule on what he terms a motion concerning Sky's misrepresentation to the court. In the trial court, Bravo filed a “Notice of Sky's Counsel's Misrepresentation to the Court.” The notice cited no legal authority. And, at a motions hearing, Bravo stated it “was filed to give Notice to the Court to make a determination by the Court without argument.” On appeal, Bravo cites no authority governing a notice of misrepresentation or requiring a court to rule on such a notice and, thus, has waived any such argument. *See Ariz. R. Civ. App. P. 13(a)(6); Polanco*, 214 Ariz. 489, n.2, 154 P.3d at 393-94 n.2.

¶7 Bravo additionally claims the trial court erred by failing to give a punitive damages instruction, however, the jury instructions and transcript show the instruction

was given. Bravo also argues the court erred by failing to rule on a motion for sanctions. Because a different defendant moved for sanctions and Bravo did not, Bravo has waived any such argument on appeal. *See City of Tempe v. Fleming*, 168 Ariz. 454, 456, 815 P.2d 1, 3 (App. 1991) (“arguments not made at the trial court cannot be asserted on appeal”); *cf. State v. Flythe*, 219 Ariz. 117, ¶¶ 6-8, 193 P.3d 811, 813-14 (App. 2008) (defendants may make different strategic choices concerning which motions to raise). In any event, any benefit from the sanctions would have accrued to the other defendant, not to Bravo.

¶8 Bravo additionally contends the trial court erred in holding him “liable for a third-party’s actions” in a contract when he was not a party to the contract. He also argues that Sky “cannot prevail in [a] Quiet Title Action” because he does not own the property. Because he does not fully develop these arguments and cites no relevant authority to support them, he has waived them.³ *See Ariz. R. Civ. App. P. 13(a)(6); Polanco*, 214 Ariz. 489, n.2, 154 P.3d at 393-94 n.2.

¶9 Bravo further argues that the trial court erred in failing to award him attorney fees. To the extent we can ascertain his argument on appeal, he appears to allege the court erred by not awarding him fees and costs under A.R.S. §§ 12-341.01 and 12-349. However, Bravo does not identify where he made claims below under these statutes, nor do we find any such claims. Instead, the motions he cites provide no statutory basis for such an award. Because he cannot assert a claim on appeal that was

³Bravo relies on *Saxman v. Christmann*, 52 Ariz. 149, 79 P.2d 520 (1938), which was subsequently overruled. *See generally Rundle v. Republic Cement Corp.*, 86 Ariz. 96, 341 P.2d 226 (1959).

not made below, he has waived this issue. *See City of Tempe*, 168 Ariz. at 456, 815 P.2d at 3. Moreover, an award under § 12-341.01 is discretionary and Bravo has not argued or shown that the court abused its discretion in denying the fees. *See Orfaly v. Tucson Symphony Soc’y*, 209 Ariz. 260, ¶¶ 17-18, 99 P.3d 1030, 1035 (App. 2004) (court has sound discretion to determine if award of attorney fees is appropriate); § 12-341.01 (court may award successful party attorney fees). Further, to prevail on appeal on a claim for fees under § 12-349, Bravo must show that the court clearly erred by not awarding him fees, *see City of Casa Grande v. Ariz. Water Co.*, 199 Ariz. 547, ¶ 27, 20 P.3d 590, 598 (App. 2001), and he has not argued or shown this on appeal.

Conclusion

¶10 For the foregoing reasons, we affirm the trial court’s judgment.

/s/ Joseph W. Howard
JOSEPH W. HOWARD, Chief Judge

CONCURRING:

/s/ Peter J. Eckerstrom
PETER J. ECKERSTROM, Presiding Judge

/s/ Virginia C. Kelly
VIRGINIA C. KELLY, Judge